

LEE TRAN & LIANG LLP

Enoch H. Liang (Bar No. 212324)

enoch.liang@ltlattorneys.com

James M. Lee (Bar No. 192301)

james.lee@ltlattorneys.com

Timothy S. Fox (Bar No. 280918)

timothy.fox@ltlattorneys.com

Lauren Sliger (Bar No. 213880)

lauren.sliger@ltlattorneys.com

601 S. Figueroa Street, Suite 3900

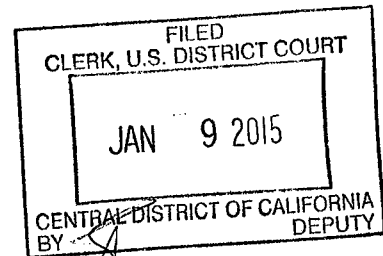
Los Angeles, California 90017

Tel.: 213-612-8900

Facsimile: 213-612-3773

Attorneys for Plaintiffs

Unilin Beheer B.V. and Flooring Industries, Ltd. Sarl



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNILIN BEHEER B.V., and
FLOORING INDUSTRIES, LTD.
SARL,

Plaintiffs,

v.

TOPSTAR FLOORING, LLC, *et. al.*

Defendants.

Case No.: 2:14-CV-02199-RSWL (PJWx)

~~[PROPOSED]~~ PROTECTIVE ORDER

[Discovery Document: Referred to
Magistrate Judge Patrick J. Walsh]

ANY PARTY INTENDING TO SUBMIT TO
THE COURT ANY DOCUMENTS COVERED
BY THIS PROTECTIVE ORDER SHALL FILE A
MOTION UNDER LOCAL RULE 79-5
REQUESTING PERMISSION TO FILE
THEM UNDER SEAL.

A handwritten signature in black ink, appearing to read "PJW", located below the protective order notice.

[PROPOSED] PROTECTIVE ORDER

1 WHEREAS, GOOD CAUSE APPEARS for the entry of this Protective Order
2 because discovery in this Action may involve the disclosure of trade secrets as
3 defined in California Civil Code § 3426.1 or other confidential, technical, business
4 and financial information, including, but not limited to, marketing information, sales
5 information, customer lists, market surveys, and other similar materials that would
6 cause substantial, material harm to the Disclosing Party if such information were
7 publicly known;

8 WHEREAS, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure,
9 this protective order (the "Protective Order") limits the disclosure of certain
10 information produced or otherwise discovered and agree to be bound by the
11 restrictions of the Protective Order limiting use of such information as provided;

12 1. All documents, electronically stored information, materials, items,
13 testimony or information, regardless of whether stored in electronic or paper form,
14 produced or filed with the Court, submitted to the Court in connection with a hearing
15 or trial, or produced, provided or served, formally or informally, either by a Party or
16 by a non-party, to or for any of the other Parties, shall be governed by this Protective
17 Order if designated in accordance with this Protective Order, and if so designated,
18 used only for the purposes of this litigation and related litigation matters and
19 governmental filings (including, for example, filings with the United States Patent
20 and Trademark Office) and not for any other purpose, including but not limited to
21 business, or competitive purpose or function. Notwithstanding the foregoing,
22 nothing in this paragraph 1 or in this Protective Order shall be deemed to limit or
23 otherwise restrict or impair in any manner any Party's use or disclosure of its own
24 information, in whatever form.

25 2. The terms of this Protective Order shall apply to all manner and means
26 of disclosure of information in discovery, whether formal or informal, designated in
27 accordance with this Protective Order, including without limitation oral testimony,
28 entry onto land or premises, and production and/or inspection of books, records,

1 documents, electronically stored information and tangible things.

2 3. Definitions

3 a. "Private" information is defined herein as information that a Disclosing
4 Party in good faith believes (i) is not in the public domain (i.e., not
5 generally known and not reasonably ascertainable by proper means)
6 and (ii) contains trade secrets (as defined in California Civil Code §
7 3426.1) or other proprietary or confidential research, development,
8 marketing, financial, technical, or commercial information, including
9 business plans, pricing information, financial statements and
10 accounting reports, minutes of board of directors meetings, marketing
11 and advertising plans, product development information and market
12 research or other commercial information.

13 b. "Disclosing Party" is defined herein as any Party or non-party who is
14 requested to produce or produces Documents or other information in
15 connection with the conduct of the Action.

16 c. "Document" shall include without limitation any documents, records,
17 exhibits, reports, samples, transcripts, oral testimony, video or audio
18 recordings, affidavits, briefs, summaries, notes, abstracts, drawings,
19 company records and reports, computer code, databases, version
20 control systems, communications, letters, correspondence, emails and
21 attachments thereto, answers to interrogatories, responses to requests
22 for admissions, pleadings or motions, including copies or computer-
23 stored versions of any of the foregoing. The term "Document" as used
24 herein specifically includes electronically stored information as that
25 term is used in the Federal Rules of Civil Procedure.

26 d. "Confidential Business Information," information is defined herein as
27 such Private information that the Disclosing Party in good faith believes
28 would cause direct harm to the competitive position of the Disclosing

1 Party if such Private information were to be disclosed or is so
2 competitively sensitive that its disclosure could materially affect the
3 business, commercial or financial interests of the Disclosing Party.

4 e. "Qualified Person" as used herein means:

- 5 (i) A Party, or an officer, director, or employee of a Party deemed
6 necessary by counsel to aid in the prosecution, defense, or
7 settlement of this litigation;
- 8 (ii.) Outside attorneys of record for the parties in this litigation, and
9 other outside counsel who are providing advice to any party in
10 connection with this litigation or are otherwise assisting in the
11 defense of this litigation, and employees or service providers of
12 such counsel to whom it is necessary that the material be shown
13 for purposes of the litigation;
- 14 (iii) In-house counsel for a Party who are responsible for assisting
15 with the litigation;
- 16 (iv.) Any person retained by a Party or its trial counsel as an
17 independent consultant or expert (who is not a shareholder,
18 officer, director or employee of a Party) who agrees in writing to
19 be bound by the terms of this Protective Order in the form of
20 Exhibit A, attached hereto (such signed agreement shall be
21 preserved by the retaining Party or trial counsel);
- 22 (v.) Any court reporter who transcribes testimony in this Action at a
23 deposition and who agrees that all testimony and exhibits that are
24 designated Private or Confidential Business Information
25 Restricted is and shall remain Private or Confidential Business
26 Information and shall not be disclosed except as provided in this
27 Order;
- 28 (vi.) The Court and the Court's personnel;

1 (vii.) Outside vendors who perform copying, document preparation, or
2 creation of trial graphics or tutorials on behalf of any Party for
3 use in this action and who agree that all testimony and exhibits
4 that are designated Private or Confidential Business Information
5 are and shall remain Private or Confidential Business
6 Information and shall not be disclosed except as provided in this
7 Order;

8 (viii.) Any other person who is designated as a Qualified Person by
9 written agreement of counsel for the Parties or by Order of this
10 Court, after notice to all Parties and a hearing;

11 f. "Receiving Party" is defined herein as any individual who has received
12 information properly designated as Private, or Confidential Business
13 Information, pursuant to this Protective Order.

14 4. A Disclosing Party may designate Private information, as defined
15 herein. In designating Private information, the Disclosing Party will make such
16 designation only as to that information that it has regularly treated as, and in good
17 faith believes contains, Private information, as defined herein and consistent with
18 Federal Rule of Civil Procedure 26(c). No item shall be deemed Private if it is
19 disclosed in a printed publication available to the public or trade, is generally known
20 throughout the trade and public, or is or comes to be known to a Party through means
21 not constituting breach of any proprietary or confidential relationship or obligation,
22 breach of this Protective Order or any improper means.

23 5. Documents and things produced that contain Private information may
24 be designated as such by marking the first page or tangible medium containing such
25 information, if it is an electronic document, or each page if it is a paper document at
26 or before the time of production as follows: "PRIVATE."

27 6. Access to information designated as PRIVATE shall be limited to
28 Qualified Persons (as defined in paragraph 3(e) above). A Receiving Party shall

1 treat information as "Private" under this Protective Order, as soon as a Disclosing
2 Party so designates the information.

3 7. A Disclosing Party may designate Confidential Business Information
4 as defined herein. In designating Confidential Business Information, the Disclosing
5 Party will make such designation only as to that information that it has regularly
6 treated as, and in good faith believes contains, Confidential Business Information,
7 as defined herein and consistent with Federal Rule of Civil Procedure 26(c).
8 Documents, testimony, information and other things designated Confidential
9 Business Information, may be disclosed only to the Qualified Persons identified in
10 subsections (ii) through (viii) of Paragraph 3(e) of this Protective Order. A
11 Receiving Party shall treat information as Confidential Business Information as soon
12 as a Disclosing Party so designates the information.

13 8. Documents and things produced that contain Confidential Business
14 Information may be designated as such by marking the first page or tangible medium
15 containing such information, if it is an electronic document, or each page if it is a
16 paper document at or before the time of production by the following:
17 "CONFIDENTIAL BUSINESS INFORMATION" or "RESTRICTED." Plaintiffs
18 will be producing documents previously produced in prior litigation that are marked
19 with a designation of "CONFIDENTIAL BUSINESS INFORMATION,"
20 "CONFIDENTIAL," or "RESTRICTED." Any documents so marked will be
21 deemed to have been designated as Confidential Business Information as defined
22 herein and treated in accordance with the applicable provisions of this Order.

23 9. In the event that at the time a document is produced the designation
24 Private or Confidential Business Information is lacking, and it is later determined,
25 in good faith, that such a designation should have appeared on the document, the
26 Disclosing Party may restrict future disclosure of the document, consistent with this
27 Protective Order, by notifying the Receiving Party in writing of the change in or
28 addition of a restrictive designation, accompanied by substitute copies of each item,

1 properly designated. As soon as notice of a designation is made by a Disclosing
2 Party, all recipients of the designated materials shall immediately treat the
3 designated Documents or information consistent with the designation given by the
4 Disclosing Party. Those individuals who reviewed the documents or information
5 prior to notice of the mis-designation or failure to designate by the Disclosing Party
6 shall return all copies of the mis-designated or non-designated documents and shall
7 honor the provisions of this Protective Order with respect to the use and disclosure
8 of any information contained in the mis-designated or non-designated Documents or
9 information. The Receiving Party shall have no liability to the Disclosing Party, the
10 Court, or third parties for any use or disclosure of any documents or information
11 prior to the time that the Disclosing Party notifies the Receiving Party in writing of
12 the change in or addition of a specific designation under this Protective Order.

13 10. In the event that either Party retains independent consultants or experts
14 to furnish technical or consulting services or to give testimony with respect to the
15 subject matter of this Action, and such Party desires to disclose to such independent
16 consultant or expert any information designated by the other Party as Private or
17 Confidential Business Information, then such disclosure shall be permitted only
18 under the following conditions:

- 19 a. Prior to disclosure, the independent consultant or expert shall
20 acknowledge, in writing, by signing a copy of Exhibit A attached
21 hereto, that he/she has received and read a copy of this Protective Order,
22 and that he/she is bound by the terms thereof.
- 23 b. Prior to disclosure of such Private or Confidential Business
24 Information, a copy of signed Exhibit A and a copy of the independent
25 consultant or expert's curriculum vitae shall be delivered by electronic
26 mail, hand delivery, facsimile or overnight courier to Trial Counsel for
27 the Disclosing Party along with a statement that the Exhibit and
28 curriculum vitae are being served in accordance with this paragraph 10

1 of the Protective Order.

- 2 c. In the event that the Disclosing Party objects to disclosure of its Private
3 or Confidential Business Information to the independent consultant or
4 expert, the Disclosing Party shall deliver by electronic mail, hand,
5 facsimile or overnight courier a notice of objection to the opposing
6 Party within five (5) business days after receipt of service of the
7 materials required to be served under subparagraph (b) of this
8 paragraph 10. In such event, disclosure of the information shall not be
9 made until the Parties agree in writing that such disclosure may be made
10 or the Court issues an order or ruling that such disclosure is permitted.
11 The Disclosing Party shall, with its notice of objection, state fully its
12 reasons and grounds for such objection. Failure to give notice of
13 objection within five (5) business days after receipt of service of the
14 materials required to be served under subparagraph (b) of this
15 paragraph 10 shall operate as a waiver of the objection, unless a reason
16 and ground for an objection becomes apparent after such time which
17 reason and ground did not exist at such time. A Disclosing Party may
18 object to the disclosure of Private or Confidential Business Information
19 to an independent consultant or expert only on the grounds that an
20 actual and material conflict of interest exists between such independent
21 consultant or expert and the Disclosing Party.
- 22 d. Unless the dispute is resolved by agreement between the Parties, the
23 Party seeking disclosure may move for a ruling by the Court on the
24 dispute. The Disclosing Party shall have the burden of establishing that
25 the disclosure should not be permitted.
- 26 e. When an expert or independent consultant has been identified pursuant
27 to the above procedure, the procedure need not be followed for any and
28 all subsequent disclosures of confidential material to the same expert or

1 independent consultant.

2 11. Information disclosed at a deposition may be designated under this
3 Protective Order by a Disclosing Party by so-indicating on the record at the
4 deposition, or by the Disclosing Party's notification of all other Parties and the court
5 reporter in writing, within fifteen (15) calendar days of receipt of the original copy
6 of the transcript of the portions of the transcript that contain information to be
7 designated under this Protective Order. The Disclosing Party shall attach a copy of
8 a written statement making such designation to the face of the transcript by page and
9 line numbers and provide a copy of same to every other Party.

10 12. Testimony designated as Confidential Business Information or exhibits
11 designated as Confidential Business Information shall not be disclosed to any
12 persons other than those specified in subsections (ii) through (viii) of Paragraph 3(e).
13 The designation of testimony given as Private or Confidential Business Information,
14 or the de-designation of such testimony given, shall not affect the confidential status
15 of exhibits presented or used in connection with such testimony.

16 13. All Private or Confidential Business Information submitted to the
17 Court, and all portions of pleadings, motions or other papers filed with the Court that
18 disclose such Private or Confidential Business Information, shall be filed under seal,
19 along with an application and proposed order pursuant to Local Rule 79-5.1, with
20 the Clerk of the Court and kept under seal until further order of the Court. The
21 parties will use their best efforts to minimize such sealing. Parties shall follow
22 procedures under pilot program for e-filing under seal documents. *See*
23 www.cacd.uscourts.gov for further information. If, after the conclusion of this
24 litigation and any time for appeal has expired, the Clerk of the Court desires to or
25 must for any reason destroy any documents that were filed under seal, the Clerk of
26 the Court may follow the regular procedures for the destruction of documents that
27 were filed under seal.

28

1 14. In the event that Documents or information designated pursuant to this
2 Protective Order are disclosed to any person not authorized by this Protective Order
3 to receive the Documents or information, the party responsible for this disclosure
4 must immediately bring all pertinent facts relating to such disclosure to the attention
5 of all Parties, and without prejudice to other rights and remedies of the Disclosing
6 Party, shall prevent further disclosure by it and seek to prevent further disclosure by
7 any other person who was the recipient of such Documents or information. The
8 identification under this section of a Party to whom disclosure was made shall not
9 constitute a waiver of attorney work product or attorney-client privileges.

10 15. The inadvertent production of any privileged or otherwise protected
11 materials shall not be deemed a waiver or impairment of any claim of privilege or
12 protection including, but not limited to, the attorney-client privilege and the
13 protection afforded to work-product materials, or the subject matter thereof. Upon
14 receiving written notice from the Disclosing Party that materials asserted to be
15 privileged or protected have been inadvertently produced, the Receiving Party shall
16 promptly return or destroy all such material (and any copies that may have been
17 made and may have been distributed) to the Disclosing Party within five (5) business
18 days of receipt of such notice. Until such materials are returned or destroyed, such
19 materials and the information contained therein shall be treated as Confidential
20 Business Information. Nothing stated herein shall limit the right of a Party to
21 challenge a claim of privilege or protection made pursuant to this paragraph.

22 16. If a Party wishes to challenge the designation of any information as
23 Private or Confidential Business Information, the Party shall, in good faith, narrowly
24 limit such efforts solely to those Documents, testimony, transcripts, and/or other
25 materials or things (or portions thereof) for which declassification reasonably
26 appears to be appropriate. The Disclosing Party shall, within ten (10) business days
27 after receipt of the Receiving Party's request for declassification, make a good faith
28 determination as to whether the information at issue should be declassified and

1 notify the Receiving Party of its determination. If the dispute cannot be resolved
2 informally or the Disclosing Party fails to respond within ten (10) business days, the
3 Receiving Party may seek appropriate relief from the Court. The Disclosing Party
4 shall have the burden of proving that the designation is proper. The designation of
5 the disputed information shall remain unless and until otherwise ordered by the
6 Court.

7 17. A Party shall not be obligated to challenge the propriety of a
8 designation of a document at any level of confidentiality identified in this Protective
9 Order at the time made, and a failure to do so shall not preclude a subsequent
10 challenge thereto.

11 18. Within sixty (60) calendar days after the conclusion of this litigation
12 and any time for appeal has expired, unless the Parties agree in writing to the
13 contrary, any originals or reproductions of any documents produced by a Disclosing
14 Party containing Private or Confidential Business Information shall be destroyed,
15 except that trial counsel shall be entitled to retain for archival purposes one (1) paper
16 and one (1) electronic copy of pleadings, correspondence, deposition transcripts,
17 deposition exhibits, memoranda, notes and other work product materials which
18 contain or refer to Private or Confidential Business Information.

19 19. Insofar as the provisions of this Protective Order restrict the
20 communication and use of the Documents produced hereunder, this Order shall
21 continue to be binding after the conclusion of this litigation except (a) that there shall
22 be no restriction on documents that are used as exhibits in open court (unless such
23 exhibits were filed under seal) or (b) that a Party may seek the written permission of
24 the Disclosing Party or further order of the Court with respect to dissolution or
25 modification of the Protective Order.

26 20. This Protective Order is being entered without prejudice to the right of
27 any Party or other person to move the Court for modification of or relief from any
28 of its terms.

1 21. Nothing shall prevent disclosure beyond the terms of this Order if the
2 Disclosing Party consents to such disclosure, or if the Court, after notice to all Parties
3 and a hearing, orders such disclosure.

4 22. Unless the Parties stipulate otherwise, evidence of the existence or
5 nonexistence of a designation under this Protective Order shall not be admissible for
6 any purpose, nor shall the designation or acceptance of any information designated
7 pursuant to this Protective Order constitute an admission or acknowledgment that
8 the material so designated is in fact proprietary, confidential or a trade secret.

9 23. This Protective Order shall not be deemed (a) a waiver of any Party's
10 or producing entity's right to object to any discovery requests on any ground; (b) a
11 waiver of any Party's right to seek an order compelling discovery with respect to
12 any discovery requests; (c) a waiver of any Party's right to object to the admission
13 of evidence on any ground; (d) a waiver of any Party's or producing entity's right to
14 use or disclose its own documents, testimony, transcripts, and/or other materials or
15 things at its sole own discretion; or (e) any waiver of the attorney-client privilege or
16 protection of the work product doctrine.

17 24. Nothing in this Order shall bar amendment of this Order by stipulation
18 of the Parties or by Order of the Court. Any such amendment made by stipulation
19 of the Parties shall be made in writing.

20 25. Nothing in this Order shall prevent disclosure beyond the terms of this
21 Order: (i) if the Disclosing Party consents to such disclosure; (ii) if the Court, after
22 notice of all affected persons, allows such disclosure; or (iii) if the party to whom
23 Private or Confidential Business Information has been produced thereafter becomes
24 obligated to disclose the information in response to a lawful subpoena or other legal
25 process, provided that the subpoenaed party gives prompt written notice to counsel
26 for the Disclosing Party and provides counsel for that party at least ten (10) business
27 days from receipt of the written notice to intervene and seek judicial protection from
28 the enforcement of the subpoena and/or entry of an appropriate protective order in

1 the action in which the subpoena was issued. In addition, nothing herein shall be
2 construed as requiring the Receiving Party or anyone else covered by this Order to
3 challenge or appeal any Order requiring production of the material designated as
4 Private or Confidential Business Information covered by this Order, or to subject
5 itself to any penalties for noncompliance with any legal process or Order, or to seek
6 any relief from this Court.

7
8 Respectfully submitted.

9 Dated: January 8, 2015

LEE TRAN & LIANG LLP

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11
12 By: /s/Lauren Sliger
13 LAUREN SLIGER
14 *Attorneys for Unilin Beheer B.V. and*
15 *Flooring Industries, Ltd. Sarl*

16 IT IS SO ORDERED.

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19
20 DATED: 1/9/15, 2015



21 THE HONORABLE PATRICK J. WALSH
22 United States District Court Magistrate Judge
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EXHIBIT A

Nondisclosure Agreement

I, _____, do solemnly swear that I am fully familiar with the terms of the Protective Order entered in *Unilin Beheer B.V. et. al. v. Topstar Flooring LLC, et. al.*, United States District Court for the Central District of California, Civil Action No. 2:14-cv-02199-RSWL (PJWx) and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of the Court. I hereby consent to the jurisdiction of the Court for purposes of enforcing this nondisclosure agreement.

DATED: _____